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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,957	01/31/2002	Fangjiang Guo	88164.000002	4571
23387	7590	07/15/2005	EXAMINER	
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			ART UNIT	PAPER NUMBER

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	Application No. 10/062,957	Applicant(s) GUO, FANGJIANG
	Examiner Kimberly S. Smith	Art Unit 3644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 05/05/04 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1.  The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(ii)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4.  (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5.  The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6.  The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8.  The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9.  The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10.  Other (including any explanation in support of the above items):  
  
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***Election/Restrictions***

1. Applicant's election with traverse of Group IV in the reply filed on 09/28/04 is acknowledged. The traversal is on the ground(s) that with regards to Groups II and IV that both groups of claims are in the same class and subclass and thereby does not present a burden on examining the inventions together. This is not found persuasive because Group IV requires the translation of the cart along a predetermined path that is not required by the invention of Group II (illustrated by Claim 12). As such, the difference in the claims while residing within the same subclass requires a divergent search based upon the requirement of the predetermined path that would not be required for the search of Claim 12. With regards to the classification of the invention, it is noted that subclass 412 is directed to railroad cars *or other livestock long distance carrying vehicles*. As the claims of this group require the transportation of the animal in a vehicle, it is considered by the examiner to be the most limiting feature of the claim and thereby subclass 412 is the most appropriate location for classification. With regards to Groups III and IV. Group IV again requires the translation of the cart along a predetermined path relative to a plurality of milking stalls whereas Group III merely requires translating the transport cart to align with an unoccupied milking stall thereby providing for a method for the cart starting out in the middle of the field, traveling through the pasture, past the side of the barn and into a single unoccupied stall. Thereby Group III would not meet the step of translating the first cart along a predetermined path relative to a plurality of milking stalls. With regards to the Applicant's assertion that the designated classes having nothing whatsoever to do with milking, it is noted that both claims 22 and 32 are silent to any milking step. These claims are specifically directed to the transportation of an animal and therefore the examiner again maintains that the

classification regarding the carrying vehicle for livestock is deemed proper. As to the arguments regarding Groups IV and Group V. With regards the requirements, the inventions of a product and process of use can be shown to be distinct if the product as claimed can be used in a materially different process of using that product. As such, the product as claimed could be used to load produce onto the transportation cart and to relocate the produce to a vacant milking stall for storage until shipment. As such, the requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-31 and 42-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 07/28/04.

#### DEFECTIVE APPEAL BRIEF

3. As the restriction requirement set forth above is deemed proper and final, the appeal brief filed on 05/05/04 is defective because it contains arguments not solely directed to the claims under prosecution in the current Application. It is noted that the propriety of a restriction requirement is a petitionable issue and thereby is a non-appealable issue. As such, the Appeal Brief includes arguments relating to claims which are withdrawn from consideration.

To avoid dismissal of the appeal, appellant must ratify the appeal brief within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing of this communication, whichever is longer; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of

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appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly S Smith  
Examiner  
Art Unit 3644

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